1947.

File No. Cr. A. Bij. 47

Examined

Legal **DEPARTMENT**

A BRANCH

Subject:— Criminal Appeals in the High Court of Bombay against the orders of acquittals from Bijapur District-

R 4/E

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Judgment recorded by the High Court in Criminal Revisw No. 457 of 1947, in the case of Emperator Vs. Keshavendra Dadiba Shinde:

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Counsel Mr. A. A. Paerbhoy with Mr. V.M.Kamat for the accused.
The Government Pleader for the Crown.
Mr. H. H. Mangund for the complainant.

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Coram: Chagla C.J. and Rajendragadkar, J.
6th November 1947.

Oral Judgment (Per Chagla C. J.):-

This is an application for enhancement of sentence passed against the accused under s. 447, s. 506, part 1, Indian Penal Code, and s. 21 of the Indian Arms Act. He was convicted kaxxx of offences under these three sections and sentenced to pay a fine of Rs. 50/- under the first, to suffer imprisonment till the rising of the Court and to pay a fine of Rs. 100/- under the second, and to pay a fine of Rs. 50/- under the third.

The facts are that the accused is a municipal councillor of Bagalkot. He was a recruting officer. He obtained a medal from Government for his services and on the day in question there was a meeting of the municipality and there was a fracas in which he and the complainant were involved. There was, if I might say so a regular democratic scene. The complainant took out his chappal and wanted to filing it at the accused and the accused picked up a stick wanting to assault the complainant, and some councillors intervened and the incident came to a close But it did not come to a close as far as the accused was concerne He suffered from a grievance that the complainant had not treated him well, and on the evening of that day he picked up his gun— he had a license for a gun— went to the house of the complainant and fired two shots within ten feet of the complaina He was originally charged under s. 447 and 507 of the Indian

Indian Penal Code, but the learned Judge below came to the conclusion on the evidence that the offence of attempt to murder was not committed, that he had no intention of either killing the complainant or causing him grievous hurt and therefore he acquitted him of the offence under that section; but he convicted him for criminal trespass under s. 447 and criminal intimidation under part 1 of s.506, and for using the gun contrary to the tenor of the licence and sentenced him as I have already indicate

Mr. Peerbhoy for the accused had made a very strong plea to us that the sentence should not be enhanced. In our opinion, the accused has been convicted of a very serious offence. He is a councillor, a man who was a recruting officer who ought to have a sense of discipline, and he takes the law into his own hands, goes to the house of the complainant with a gun to threaten him, so that, on his own admission, he should be alarmed. It is in evidence that before he went to the house of the complainant he went and saw one Dr. Deshpande. At that time there were bullets in the gun. Deshpande very wisely told him that he ought to cool down and that he ought not to take the law into his own hands. But all that he did was that he removed the bullets; but he put in pellets in stead and he proceeded on his mission as he originally intended. It is true that he did not use bullets, but even pellets can cause injury,, and in this case there was also a charge of gun powder. The photograph taken shows that the two shots fired were at two different places and that seems to be accounted for by the complainant moving from one place to the other when he was frightened by the presence of the accused armed with a gun. We feel that a sentence of fine is grossly inadequate looking to the circumstances of the case and the position occupied by the accused. If discussions and disputes which arise in a municipal body are to be settled by one of the councillors taking the law into his own hands, picking up a gun and frightening the life out of another councillor, democratic life in this country would become impossible, and we think this is a case where an exemplary sentence should be passed

against the accused. We would have taken a much more serious view of the matter but for the appeal made by Mr. Gerbhoy that he has led a blameless life, he rendered distinguished services to the to the state for which he was rewarded. But even taking all that into consideration we must in this case enhance the sentence. We maintain the sentence as fat as the charge under section 447 is concerned. With regard to the charge under section 503, it may be pointed out that the learned Judge has convicted him under the first part. In our opinion really he should have been convicted on h his own admission under the second part. Because, although his intention was merely to alarm the complainant, the threat he had held out was the threat to cause death or grievous hurt. But that is not the gist of the offence. Intention is one thing and threat is another, intention being merely to cause alarm, he wanted to carry out that intention by holding out a threat which was in the nature of a threat to cause death or grievous hurt. Therefore we convict him under section 503 part2, and the sentence we pass is three months' rigorous imprisonment and a fine of Rs.100 or ind default rigorous imprisonment for three months. The sentence under the third charge will be maintained.

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